

SENATE CHAMBER,
AUSTIN, TEXAS, Friday, May 5, 1871. }

Senate met pursuant to adjournment; President Campbell; presiding.

Roll called; quorum present.

Absent—Senators Douglass and Flanagan.

Absent—excused—Senator Evans.

Prayer by the Chaplain.

On motion of Senator Pettit, the reading of the journal of yesterday was dispensed with.

REPORTS OF STANDING COMMITTEES.

Report of Committee on Engrossed Bills :

COMMITTEE ROOM,
AUSTIN, May 5, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Engrossed Bills, having examined and compared Senate bills No. 288, "An act incorporating the East Texas Road Steamer and Transportation Company;" No. 397, "An act supplemental to an act entitled 'an act to provide for the payment of the public debt of the State of Texas,' approved May 2, 1871" and No. 399, "An act to incorporate Charles Sumner Male and Female Academy, in the town of Henderson, county of Rusk," find the same to be correctly engrossed.

G. T. RUBY,
E. L. DOHONEY,
P. W. HALL.

Report read and received.

Under direction of the President the Secretary carried to the House for concurrence Senate bills Nos. 288, 397 and 399.

Report of Committee on Education :

COMMITTEE ROOM,
AUSTIN, May 4, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Education, to whom was referred Senate bill No. 387, entitled "An act to incorporate the Galveston Medical College Hospital, have had the same under careful consideration, and a majority thereof instruct me to report it back to the Senate

with the accompanying amendments, and recommend that the bill do pass.

Respectfully,

E. PETTIT,
Chairman.

Substitute for section two.—“Section 2, That the incorporators of said ‘Galveston Medical College Hospital’ shall within six months after the passage of this act proceed to elect from their own number a Board of Trustees, consisting of not less than eleven, nor more than twenty members, which board shall have full power and authority to fill all vacancies occurring therein by death, resignation or otherwise, and also when duly organized shall have such management and control of the affairs of said hospital as may hereinafter be prescribed.”

Substitute for section ten: “That the trustees of said hospital shall, upon application of the county court of any county of this State, admit any indigent person, being diseased or disabled, as a patient in said hospital; *provided*, that the charge for such indigent person shall not exceed the sum of one dollar per day for each day such person may be treated, and the further sum of nine dollars for each of such persons as may die in said hospital and be buried at its expense.”

Substitute for section eleven: “That said board of trustees shall receive and treat in said hospital also, persons, as patients, who may be able to pay their expenses, also patients from any society, association or club, upon the same terms and under the same regulations as are prescribed in section nine of this act.”

Amendments—strike out phrase “section 10” and substitute therefor “section 9.”

Also, strike out phrase “section 11” and substitute therefor “section 10.”

Also, strike out phrase “section 12” and insert “section 11,” wherever they may occur in the body of the original bill.

On motion of Senator Pettit, the rules were suspended, bill read second time and amendments adopted.

Special message from the Governor, as follows:

GOVERNOR'S OFFICE,
AUSTIN, May 4, 1871.

To the honorable Senate and House of Representatives:

GENTLEMEN: I have the honor to inclose copies of correspondence and certificates showing the cancellation of the face plates of the State of Texas frontier defence bonds, as authorized by the act of the Legislature, approved this day, entitled “An act supplemen-

tary to an act entitled 'an act providing for the issuance and sale of the bonds of the State for the purpose of meeting the appropriations made for maintaining ranging companies on the frontier,' approved August 5, 1870."

Very respectfully,

EDMUND J. DAVIS,
Governor.

NATIONAL BANK NOTE COMPANY,
No. 1 WALL STREET, NEW YORK, }
March 22, 1871.

Hon. JAMES P. NEWCOMB, Secretary of State of Texas, St. Nicholas Hotel, City:

DEAR SIR: With this we hand you our superintendent's certificate of cancellation of the face places of the "State of Texas frontier defence bonds," of the denomination of \$1000, with eighty coupons, duly witnessed as per instructions in a letter of the Hon. E. J. Davis, Governor, under date of the twenty-fifth of February, and your letter of twenty-first instant, and certified by Daniel F. Tyler, a notary public in and for the city and county of New York, which we trust will be found to your own and the honorable the Governor's satisfaction.

With much respect,

We have the honor to be

Your obedient servant,

A. D. SHEPARD,
Treasurer.

NATIONAL BANK NOTE COMPANY,
No. 1. Wall street, New York, U. S. A.

I hereby certify that the \$1000 bond, and eighty coupon face plates engraved for the "State of Texas frontier defense bonds," have this day been thoroughly destroyed by cancellation in my presence, and before the Hon. James P. Newcomb, Secretary of the State of Texas, S. M. Swenson, Esq., and R. G. Rolston, Esq., President of the Farmers' Loan and Trust Company of New York city.

W. D. NICHOLS,
Superintendent.

Attest,

JAMES P. NEWCOMB,
R. G. ROLSTON,
S. M. SWENSON.

City and county of New York, ss:

I, Daniel F. Tyler, a notary public in and for the city and county

of New York, do hereby certify that on this twenty-second day of March, in the year eighteen hundred and seventy-one, the above named parties, to-wit: W. D. Nichols, James P. Newcomb, R. G. Rolston and S. M. Swenson, personally known to me, appeared before me and severally acknowledged to me, that they signed and witnessed the above certificate and that the cancellation of the steel plates named in the above certificate was done in their presence, and that said cancellation was complete and effectual.

In witness whereof, I have hereunto set my hand and seal, the [L. s.] day and year first above written.

DANIEL F. TYLER,

Notary Public, New York county.

Message read, and, on motion of Senator Fountain, referred to the Committee on Public Debt.

REPORTS OF SELECT COMMITTEES.

Senator Dohoney submitted the following report of select committee on House bill No. 472, "An act for the relief of the heirs and assignees of James Power and James Hewitson :

COMMITTEE ROOM,
AUSTIN, May 1, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your Select Committee, to whom was referred House bill No. 472, "an act for the relief of the heirs and assignees of James Power and James Hewitson," having had the same under careful consideration, the majority instruct me to submit the following report, to-wit :

"The facts upon which this claim is based are as follows. In the year 1826 James Power, an emigrant from Ireland, came to Texas, then a part of Mexico. Said Power entered into a partnership with James Hewitson, a citizen of Mexico ; and the two jointly obtained permission from the State of Coahuila and Texas, and also from the General Government of Mexico, to colonize a portion of the country now embraced in the counties of Refugio and San Patricio, of the State of Texas. On the eleventh day of June, 1828, a contract was entered into by said Power & Hewitson with the government of the State, under the concession and with the consent of the Supreme Government of Mexico, for colonizing and settling the territory conceded, and under said contract the colony, known as the Power & Hewitson Colony, was formed and settled. The land granted to said Power & Hewitson by virtue of this contract was made to them as empresarios.

After the said James Power had become a naturalized citizen of Mexico, and in February 1834 the Congress of the State of Coahuila and Texas made its decree No. 253, which may be found on pages 230 and 231 of the laws and decrees of Coahuila and Texas. Article one of said decree reads as follows: "Art. 1: Eight sitios of land are hereby granted to each of the empresarios Santiago Power and Santiago Hewitson, of the vacant lands of the State, as an indemnification for the expenses they have incurred in virtue of the contract which they entered into in 1828; *provided*, that at the expiration of the terms they shall not have been able to fulfil their engagement." On the twentieth of November, 1834, the said Power & Hewitson presented their petition to the Governor of the State, setting forth that the conditions specified in said decree No. 253 had transpired, and praying for a confirmation of the grant therein provided for. On this petition the following grant was made, to-wit:

"MONCLOVA, November 21, 1834.

"In conformity with the provisions of the decree of February 3, of the present year, I grant to the petitioners the possession of sixteen leagues of land, which they ask at the place they designate, provided they are entirely vacant, and do not belong by any title whatever to any person or corporation, and that they are actually within the enterprise contracted for with the Government. The Commissioner of the said empresarios, C. Jesus Vidauri, and in his absence the Judge of the first instance of the town of Refugio, I commission and authorize, in due form by special commission, to put the parties interested in possession of the said sixteen leagues of land, and to issue the corresponding titles, acting entirely in conformity with the laws. Let a copy be given to the parties interested, of their petition and this decree by the Secretary's office, that it occurring with the same to the appointed commissioners it may have its due effect.

"ELQUIZABAL.

"T. ANTONIO PADILLA, Secretary."

"This is a copy of its original. to which I certify:

"T. ANTONIO PADILLA,

"Secretary.

"MONCLOVA, December 16, 1834."

"GENERAL LAND OFFICE,

"AUSTIN, April 20, 1871.

"I, John Matthias, Translator in the General Land Office of the State of Texas, bonded and sworn, certify that the foregoing is a cor-

rect translation of its original in the Spanish language on file in said office, and I further certify that the records of this office do not show that possession was ever given of the sixteen leagues of land referred to in the above document to Messrs. Hewitson & Power.

“JOHN MATTHIAS,

“Translator.”

“The State of Texas, General Land Office—I, Jacob Kuechler, Commissioner of the General Land Office of the State of Texas, certify that John Matthias is translator in said office, bonded and sworn, and that his acts as such are entitled to credit.

[L. S.] “In testimony whereof, have hereunto set my hand and caused the seal of said office to be affixed, at Austin, this twentieth day of April, A. D. 1871.

“JACOB KUECHLER,

“Commissioner General Land Office.”

Soon after the aforesaid grant was made the Texas revolution commenced, and the country was occupied by the armies of Mexico and Texas, until the establishment of the Republic of Texas in 1836. For years little regard was paid to the Spanish and Mexican land grants, and parties holding certificates and grants from the Republic of Texas seized upon and located these lands, as well as all the other lands granted to said Power & Hewitson within the limits of their colony. Suits were instituted for the recovery of some of these lands, and after years of litigation the Supreme Court of the State of Texas, in the year 1855, in the case of “Smith vs. Power,” fourteen Texas Reports, page 146, made a decision which was supposed at the time, and for years afterward, to decide against all the claims of said Power & Hewitson for lands in Texas. Nearly four years prior to this, and in the year 1852, Power died, leaving a widow and minor heirs, who were not able to represent their interests properly in the courts, and the decision of our Supreme Court just referred to was evidently made upon an incomplete presentation of the facts of the case as will hereinafter more fully appear. That decision, however, had no reference to the land claim now under consideration. The suit in which the decision was rendered was for the title to four and three-quarter leagues of land, the balance of twenty-two leagues purchased by said Power & Hewitson from the State of Coahuila and Texas. But the court in deciding the case laid down a dictum which it is claimed affects fatally the claim now under consideration, and all similar claims. The gist of said decision was that “no title can issue or be supported within the border or literal leagues unless with the sanction of both govern-

ments." That is the grant must have the sanction of the Government of the State of Coahuila and Texas, and also that of the Supreme Government of Mexico. And as the grant now under consideration was made by the aforesaid State Government only, and was for lands situate within the littoral leagues, the inference is that in the light of the aforesaid decision the grant is not a valid one.

In order to clearly understand the question now under consideration, it will be necessary, before proceeding further, to state that article four of the colonization laws of 1824, of the Mexican government, reads as follows: "There cannot be colonized any lands comprehended within twenty leagues of the limits of any foreign nation, nor within ten leagues of the coasts, without the previous approbation of the general Supreme Executive power." (See Oldham & Whitis's Digest, page 761.) The Supreme Court of the State of Texas, in the decision referred to, seems to have certainly misconstrued this law. The court attempts to apply the inhibition to all grants of land within the border and littoral or coast leagues, while the language of the law itself clearly confines it to the colonization of emigrants and foreigners, and has no reference whatever to grants to citizens or individuals. It was only where lands were to be colonized, within the border or coast leagues, that the consent of the Supreme Executive power was necessary, and then only as to the establishment of the colony, and not as to the grant of titles to lands within the colony limits. The Supreme Court of the United States, at its December term, 1855, in the case of "*Arguella et al. vs. the United States*," decided this question as we have just stated it. (Section 18, Howard Reports, page 539.) The case went up from the State of California, and involved the very point now under consideration. The grant was made while California was a part of Mexico, and the land was situate on the bay of San Francisco, within the coast or littoral leagues. In that case, as in this, the grant was made by authority of the State government, and without any assent of the Supreme Executive power of Mexico, and the same question was raised that was decided by our own Supreme Court, in the case of "*Smith vs. Power*." But the Supreme Court of the United States, in construing article four of the colonization laws of 1824, arrived at a conclusion the very reverse of that arrived at by our Supreme Court in the case referred to. In the case of "*Arguella vs. United States*," just cited, it is decided that the consent of the Supreme Executive Government of Mexico is only required in cases of the colonization of foreigners, and that land grants made to citizens and individuals by the State government are and ever have been valid and binding, as well within the littoral and border leagues as elsewhere. The court in this case

says: "The regulations of 1828, made for the purpose of carrying into effect the law of 1824, evidently gives this construction to that act. It makes a clear distinction between empresario contracts for colonization and grants to Mexican citizens. In conformity with the fourth section of that act, it requires grants to empresarios to have the sanction of the supreme government, while those made to individuals or families need only the approval of the territorial deputation." And in this case the court decreed the title to the heirs of Arguello, who held under a grant from the commissioner of California only, for land within the coast leagues. The case under consideration stands upon exactly the same grounds. It is an absolute grant from the Executive of the States of Coahuila and Texas, made in accordance with a decree of said State to said Power & Hewitson, citizens of Mexico, and, in the light of the aforesaid decision, is a valid grant, and the heirs and assignees of said Power & Hewitson are entitled to the benefits thereof, unless they are barred by lapse of time. The statutes of limitation in civil suits were suspended in this State from the twenty-eighth day of January, 1861, until the thirtieth day of March, 1870, (see section forty-three of article twelve, present State Constitution.) According to the best information we can get, the heirs of Power at the former date were yet all minors. But aside from this, we infer that with a positive decision of our Supreme Court standing as the apparent law of the State from 1855 up to the present time, and which, if law determines against all the landed rights of these parties in the State that they are excused from any apparent laches, and that the rules of limitation ought not and do not apply to the case.

But it is held by some that our State Constitution (section six of article ten) which restricts the Legislature from granting lands except to actual settlers in lots not exceeding one hundred and sixty acres, effectually cuts off relief from all claims of this character. It is very doubtful as to what is the true construction of this section—whether it is to be confined to literal grants of land, or whether its meaning is to be extended also to the granting of certificates by which lands may be located and secured. But so far as the case under consideration is concerned, it matters not what construction is put on this constitutional provision. No vested right of any party can be interfered with by any law, or even a constitutional provision, afterward enacted. The Constitution of the United States prohibits any State from passing any law impairing the obligation of contracts. In the suit of Gray, receiver of the Memphis and El Paso and Pacific Railroad vs. the Governor and Commissioner of the General Land Office of the State of Texas, lately decided in the United States Circuit Court

for the Western District of Texas, and which involved the validity of the land grant made by the State to said railroad company, it was decided that such land grants made by a State were contracts in the sense of the Constitution, and that any act of a State Legislature or of a Constitutional Convention, which seeks to impair the obligation of such a contract, is simply null and void. And this position is sustained by numerous decisions. It matters not what construction may be placed on section six of article ten of the State Constitution, so far as the case under consideration is concerned. The records of the General Land Office of the State show an absolute grant from the State of Coahuila and Texas to the Mexican citizens, Power & Hewitson, for sixteen leagues of land, but that said parties never came into possession of the land. The Supreme Court of the United States has decided in exactly a similar case that the grant was valid, and the basis of a good title. The facts upon which this claim is based, as well as the general history of the State, show that neither these parties nor their heirs nor assignees have, by any laches on their part, lost their vested rights under the aforesaid grant. And it is respectfully submitted that no provision of the Constitution (whatever construction may be placed on it) can in any way affect the vested rights of these parties under the contract made with them by the State of Coahuila and Texas in 1834. But it will be said by some that it is bad policy to grant relief on so large a land claim. If the claim is a just and valid one, we have no right to object to it on account of the amount. If it is illegal or unjust, it should be rejected if it called for but a single acre of land. But when we look at the case as it is, we can hardly consider this so large a claim after all. James Power was a wealthy Irish emigrant, who came to this country when it was a wild waste of uninhabited territory; when the Mexican Government was offering leagues upon leagues of land for emigrants and settlers; this man expended his princely fortune in trying to colonize and settle the country, and then by an erroneous decision of our Supreme Court, lost every foot of land in the State that had been granted him by the Mexican Government, and died leaving his descendants in poverty.

It is not proposed to interfere with the lands designated in the original grant, and which were taken, and are now held by other parties. The bill proposes to disturb no existing titles, but simply to authorize the Commissioner of the General Land Office to issue certificates to the parties in interest to the extent of the original grant as shown by the records of his office. Your committee believe that this is a valid and subsisting claim, and one that the courts would be bound to respect if the matter were properly tested. But

as the parties in interest are poor, and have been unsuccessful in past litigation, and the remedy here is much more speedy and less expensive, I am instructed to report the bill back with the recommendation that it do pass.

E. L. DOHONEY,
Chairman Select Committee.

On motion of Senator Dohoney, the rules were suspended to consider the report.

Bill read second time.

On motion of Senator Mills, the bill and report were made special order for Tuesday next at 11 A. M. and one hundred copies of the report and bill ordered printed.

Senator Baker submitted the following report of Select Committee on House bill No. 574, "An act to incorporate the Austin and Texas Pacific Junction Railroad and Telegraph Company."

COMMITTEE ROOM,
AUSTIN, May 5, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Special Committee to whom was referred House bill No. 574, "An act to incorporate the Austin and Texas Pacific Junction Railroad and Telegraph Company," would beg leave to report the bill back to the Senate and respectfully state that after due deliberation your committee earnestly and unanimously recommend the passage of the bill.

M. H. BOWERS,
THOS. H. BAKER.
H. R. LATIMER.

Message from the House by the Chief Clerk, returning to the Senate the following Senate bills, the same having passed the House:

No. 182, "An act to incorporate the Tyler Tap Railroad Company."

No. 238, "An act to amend 'an act fixing the terms of the Supreme Court of the State of Texas, and authorizing the court to establish rules,' approved August 13, A. D. 1870."

No. 285, "An act to validate certain acts of the County Court of Van Zandt county;" also,

No. 312, "An act to authorize the Galveston, Harrisburg and San Antonio Railway Company, to unite or consolidate its railroad with connecting roads," passed with the following amendment: add to section one the following words, "and may mortgage its railroad, or any portion thereof, or include the same in any mortgage it is authorized to make by existing law."

No. 209, "An act to authorize the County Court of Milam and Brazos counties to levy and collect a special tax for the purpose of erecting a new court house in Milam county, and a jail in Brazos county," with the following amendments: Strike out section two and add section three number two; amend title to read as follows: "An act to authorize the County Court of Milam county to levy a special tax for the purpose of erecting a new court house in said county."

Also, transmitting for concurrence House bill No. 647, "An act to amend 'an act prescribing the mode of proceeding in district courts in matters of probate,' approved August 15, 1870."

Also, requesting the Senate to furnish the House a copy of Senate bill No. 64, "An act to authorize the District Attorney of the Third Judicial District, to draw his salary from the date of filing his oath of office with the Secretary of State," the same having been lost or mislaid.

Also, returning the following enrolled Senate bills, the same having been signed by the Speaker in open session:

No. 102, "An act to further amend the eleventh section of 'an act to provide for the registration of deeds and other instruments of writing,' approved May 12, 1846."

No. 195, "An act to incorporate the Hempstead and West Liberty Air Line Railway Company."

No. 197, "An act to require the Clerk of the District Court of Lamar county to index the records in his office and providing for his payment therefor."

No. 237, "An act for the benefit of James S. Montgomery, assignee of H. O'Hara."

No. 239, "An act exempting telegraphic operators in this State from serving on juries and in the State militia."

Enrolled Senate bills signed by the President in open session.

Also, transmitting for signature the following enrolled House bills:

House bill No. 138, "An act for the relief of J. L. L. McCall, late District Attorney of the Thirty-third Judicial District of this State."

House bill No. 328, "An act for the relief of the heirs of Orlando Forrest."

House bill No. 525, "An act to incorporate the Union Coal, Iron and Copper Mining and Manufacturing Company."

House bill No. 613, "An act supplemental to an act entitled 'an act to authorize counties, cities and towns to aid in the construction of railroads and other works of internal improvement,' approved April 12, 1871."

House bill No. 466, "An act to incorporate the Blufton Male and Female Academy."

House bill No. 88, "An act providing for the completion and control of the Supreme Court building, library, etc."

House bill No. 348, "An act to incorporate the Hope Independent Fire Company No. 4, of Galveston, Texas."

House bill No. 598, "An act to prohibit the sale of intoxicating or spirituous liquors within two miles of Mansfield College, Tarrant county."

House bill No. 500, "An act to authorize the Fire Engine, the Hook and Ladder and the Hose Companies of the City of Galveston to increase the number of men in each company."

House bill No. 14, "An act to incorporate the Casino Society of Victoria."

House bill No. 409, "An act to incorporate the city of Brenham, and to grant a new charter to said city, and to repeal all acts heretofore passed, incorporating said city, which may be in force by virtue of any existing charter."

House bill No. 399, "An act to incorporate the town of Waxahachie in Ellis county."

House bill No. 385, "An act to incorporate the town of Lexington, in Burleson county."

House enrolled bills signed by the President and returned to the House.

On motion of Senator Baker, the rules were suspended to consider the report and bill. House bill No. 574 read second time and passed to a third reading.

On motion of Senator Baker, the rules were further suspended and House bill No. 574 read third time, passed and sent to the House.

By leave Senator Ford submitted the following report of Committee on State Affairs on Senate bill No. 396 :

COMMITTEE ROOM,
AUSTIN, May 5, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your committee on State Affairs, to whom Senate bill No. 396 was referred, entitled "An act confirming the powers granted to the municipal authorities of the incorporated cities and towns of the State," have carefully considered the same and instruct me to report the same back and recommend its passage.

S. W. FORD,
Chairman.

Report read.

On motion of Senator Mills, the rules were suspended and bill read second time, ordered engrossed and passed to a third reading.

On motion of Senator Mills, the rules were further suspended and Senate bill No. 396 read third time and passed.

BILLS AND RESOLUTIONS.

By Senator Saylor: a bill (Senate bill No. 400) to be entitled "An act to authorize the Attorney General of the State to compromise State claims." Read first time and referred to the Committee on Judiciary.

Also, a bill (Senate bill No. 401) to be entitled "An act authorizing the County Court of Burleson county to levy a special tax for the purpose of building a court house." Read first time and referred to the Committee on Judiciary.

Also, a bill (Senate bill No. 402) to be entitled "An act supplementary to the several acts relating to the Galveston, Houston and Henderson Railroad Company." Read first time and referred to the Committee on Internal Improvements.

By Senator Mills: a bill (Senate bill No. 403) to be entitled "An act to authorize the citizens of Wallace's Prairie, in Grimes county, to erect gates across the public roads in said prairie." Read first time, rules suspended, read second time, ordered engrossed and passed to a third reading.

On motion of Senator Mills, the rules were further suspended and Senate bill No. 403 read third time and passed.

By Senator Cole, a bill (Senate bill No. 404) to be entitled "An act to exempt certain persons, therein named, from jury and militia duty in Texas." Read first time.

Senator Ruby moved that the bill be referred to a select committee of three. Carried.

The President appointed as such committee Senators Ruby, Donohoney and Cole.

By Senator Pickett, a bill (Senate bill No. 405) to be entitled "An act supplementary to the act, entitled 'an act to adopt and establish a Penal Code for the State of Texas,' approved August 28, A. D. 1856." Read first time, rules suspended, read second time, and passed to a third reading.

On motion of Senator Gaines, the rules were further suspended and Senate bill No. 405 read third time and passed.

Senator Mills offered the following resolution:

Resolved, That the proprietors of the Houston *Daily Union* be and are hereby, entitled to pay at the rate of seven cents per copy for each copy furnished to the members of the Senate during the

present session of the Legislature; and that the Secretary of the Senate be required to draw his warrant upon the Treasury for an amount sufficient to satisfy their claim.

Resolution read, and on motion of Senator Gaines referred to Committee on Contingent Expenses.

On motion of Senator Saylor, the rules were suspended to take from file Senate bill No. 209, "An act to authorize the County Court of Milam county to levy and collect a special tax, for the purpose of erecting a new court house in Milam county."

On motion of Senator Saylor, the House amendments were concurred in.

Senator Baker introduced a bill (Senate bill No. 406) to be entitled "An act authorizing Jacob Carroll to construct a toll bridge across Peach creek, in Gonzales county." Read first time, rules suspended, read second time, ordered engrossed and passed to a third reading.

On motion of Senator Baker, the rules were further suspended, and Senate bill No. 406 read third time and passed.

By Senator Gaines: a bill (Senate bill No. 407) to be entitled "An act to incorporate the Navasota and Washington county Ferry Company." Read first time, rules suspended, read second time.

Senator Ruby offered the following amendment, which was adopted: Amend section one line two, by adding after the words "C. D. Harn" the name of "Matthew Gaines."

Bill ordered engrossed and passed to a third reading as amended.

On motion of Senator Gaines, the rules were further suspended, and Senate bill No. 407 read third time and passed.

Senator Gaines offered the following resolution (Senate concurrent resolution No. 5):

Be it resolved, That the Senate, the House of Representatives concurring, adjourn *sine die* on Monday the fifteenth day of May, 1871, at 12 o'clock.

Senator Mills offered the following as a substitute for the resolution:

Resolved, That the President of the Senate and Speaker of the House of Representatives are hereby authorized and required to adjourn their respective bodies *sine die*, upon the fifteenth day of May at 12 o'clock M. Adopted.

Senator Gaines moved a call of the Senate. Call sustained.

Absent—Senator Hertzberg.

Absent—excused—Senator Evans.

On motion of Senator Saylor, the call was suspended.

Senator Bowers offered the following amendment: Amend by striking out "Monday the fifteenth" and inserting the words "Mon-

day the twenty-second;" amend further by adding the words "and that no further business will be transacted after Thursday the eighteenth of May, 1871, except the consideration of reports from the Committee on Enrolled Bills and messages from the Governor."

Senator Dohoney offered the following amendment to the amendment of Senator Bowers: Move to amend by striking out "Monday twenty-second" and inserting "Saturday the twentieth."

Senator Gaines moved that the resolution and pending amendments be made the special order for to-morrow at 11 A. M.

Yeas and nays called for and motion lost by the following vote:

Yeas—Mr. President, Ford, Gaines, Saylor—4.

Nays—Baker, Bell, Bowers, Broughton, Cole, Dohoney, Douglass, Flanagan, Fountain, Hall, Hertzberg, Hillebrand, Latimer, Mills, Parsons, Pettit, Pickett, Pridgen, Pyle, Rawson, Ruby, Shannon, Tendick—23.

12 o'CLOCK M.

The hour for executive session having arrived, on motion of Senator Parsons, the special order was postponed until the matter pending be disposed of.

Senator Saylor moved that the amendments to the resolution be laid on the table. Carried.

The question then being upon the adoption of the original resolution, Senator Flanagan moved to lay the resolution on the table.

Yeas and nays called for and motion to lay on the table lost, by the following vote:

Yeas—Mr. President, Flanagan, Ford, Pridgen, Rawson—5.

Nays—Bell, Bowers, Cole, Dohoney, Douglass, Fountain, Gaines, Hall, Hertzberg, Hillebrand, Latimer, Parsons, Pettit, Pickett, Pyle, Ruby, Saylor, Shannon, Tendick—19.

Senator Dohoney offered the following amendment which was adopted: Move to amend by striking out the word "fifteenth" and inserting in lieu thereof the word "eighteenth."

The question then being upon the adoption of the resolution as amended, the yeas and nays were called for and the resolution adopted by the following vote:

Yeas—Baker, Bell, Bowers, Broughton, Cole, Dohoney, Douglass, Flanagan, Fountain, Gaines, Hall, Hertzberg, Hillebrand, Latimer, Parsons, Pettit, Pickett, Pyle, Rawson, Ruby, Saylor, Shannon, Tendick—23.

Nays—Mr. President, Ford, Pridgen—3.

The hour for postponed special order, executive session, having arrived, on motion of Senator Fountain, it was postponed for fifteen minutes.

Senator Fountain offered the following resolution (Senate concurrent resolution No. 6) which was adopted:

Resolved, by the Senate, the House of Representatives concurring, That a joint committee consisting of three on the part of the Senate and five on the part of the House, be appointed to visit the State Fair at Houston.

The President appointed as such committee on the part of the Senate, Senators Fountain, Flanagan and Saylor.

On motion of Senator Pyle, Senator Gaines was added to such committee.

By leave, Senator Flanagan submitted the following reports of the Committee on Internal Improvements :

COMMITTEE ROOM,
AUSTIN, May 5, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Internal Improvements, to whom was referred House bill No. 476, to be entitled "An act to incorporate the Galveston and Colorado Railroad Company," having had the same under consideration, respectfully report it back and recommend its passage with the following amendments, to-wit: Amend section four by striking out all after the word "State," in line fifteen of said section; amend section seven by striking out all after the word "passage" in said section;" amend section six by striking out all after the word "corporations."

Very respectfully,

WEBSTER FLANAGAN,
Chairman.

COMMITTEE ROOM,
AUSTIN, May 4, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Internal Improvements, to whom was referred House bill No. 626, "An act to incorporate the Carthage Branch Railway Company," have had the same under consideration, and recommend its passage with amendment to section six: strike out all after "act" in line three.

Respectfully,

WEBSTER FLANAGAN.
Chairman.

COMMITTEE ROOM,
AUSTIN, May 4, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Internal Improvements, to whom

was referred Senate bill No. 360, a bill entitled "An ~~act~~ amendatory of an act to incorporate the Pacific and Great Eastern Railway Company of Texas," have duly considered the same and recommend its passage with following amendment: strike out section two.

WEBSTER FLANAGAN,
Chairman.

Reports read and laid over under the rules.

Special message from the Governor by his private Secretary, as follows:

GOVERNOR'S OFFICE,
AUSTIN, May 5, 1871.

To the Honorable Senate and House of Representatives of the State of Texas:

GENTLEMEN: I have the honor to inform your honorable body that the following named bills have been received by me and approved, to-wit:

Senate bill 123, "An act in relation to the Atlantic and Pacific Railroad Company," approved March 28, 1871.

Senate bill 36, "An act to incorporate the German Casino of Columbus, Texas," approved April 17, 1871.

Senate bill 224, "An act to incorporate the Henderson Male and Female College in Rusk county," approved April 5, 1871.

Very respectfully,

EDMUND J. DAVIS,
Governor.

Message read.

By leave, Senator Ruby introduced a bill (Senate bill No. 408) to be entitled "An act to require the Judge of the Eighteenth Judicial District, to hold a special term of the District Court of Brazoria county." Read first time, rules suspended, read second time, ordered engrossed and passed to a third reading.

On motion of Mr. Ruby, the rules were further suspended, and Senate bill No. 408 read third time and passed.

By leave, Senator Pridgen introduced a bill (Senate bill No. 409) to be entitled "An act to encourage the Gulf, Western Texas and Pacific Railway Company in the construction of their railways." Read first time and referred to Committee on Internal Improvements.

Senator Pridgen submitted the following report of Committee on Enrolled Bills:

COMMITTEE ROOM,
AUSTIN, May 5, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Enrolled Bills have carefully examined

and find correctly enrolled the following Senate bills, to-wit: No. 197, entitled "An act to require the clerk of the District Court of Lamar county to index the records of his office, and providing for his payment therefor;" No. 195, entitled "An act to incorporate the Hempstead and West Liberty Air Line Railway Company;" No. 237, entitled "An act for the benefit of James S. Montgomery, assignee of H. O'Hara;" No. 239, entitled "An act exempting telegraphic operators in this State from serving on juries and in the State militia;" No. 102, entitled "An act to further amend the eleventh section of 'an act to provide for the registration of deeds and other instruments of writing,' approved May 12, 1846," and to-day at 11:45 o'clock A. M., presented them to the Governor for his approval.

B. J. PRIDGEN,
Chairman.

Reports read and received.

On motion of Senator Parsons, the Senate, at 12:42 o'clock P. M., took a recess for three minutes.

12:45 o'clock P. M.

The hour having arrived for postponed special order, the Senate went into executive session.

IN SENATE.

On motion of Senator Bowers, the Secretary was instructed to inform the Governor that the Senate advises and consents to the following appointment to-wit: Jacob C. DeGress, for Superintendent of Public Instruction.

Senator Ruby moved to adjourn to 10 o'clock A. M. Monday, yeas and nays called for and motion lost by the following vote:

Yeas—Mr. President, Baker, Gaines, Hall, Latimer, Pickett, Ruby, Tendick—8.

Nays—Bell, Bowers, Broughton, Cole, Dohoney, Douglass, Flanagan, Ford, Fountain, Hertzberg, Hillebrand, Mills, Parsons, Pettit, Pridgen, Pyle, Rawson, Saylor, Shannon—19.

Senator Ruby moved to adjourn to 5 P. M. Lost.

On motion of Senator Parsons, the Senate at 1:25 adjourned to 4:30 o'clock P. M.

AFTERNOON SESSION.

4:30 o'clock P. M.

Senate met pursuant to adjournment; President Campbell presiding.

Roll called; no quorum present.

Absent—Senators Bell, Bowers, Douglass, Ford, Flanagan, Pyle.

Absent—excused—Senator Evans.

On motion of Senator Cole, Senator Pyle was excused.

The Sergeant-at-Arms was dispatched for the absentees.

Senators Bell, Bowers and Ford appeared, answered to their names, and offered their excuse for absence.

Quorum present.

Senator Gaines moved that the Senate adjourn to 10 A. M. Monday. Lost.

On motion of Senator Mills, the rules were suspended to take from file House bill No. 357, "An act making appropriations for the support of the State government, for deficiencies for the fiscal year ending August 31, 1871, and for the fiscal year beginning September 1, 1871, and ending August 31, 1872."

The Senate receded from the following amendments in which the House refused to concur: Under head of State Department, lines eighteen and nineteen, strike out "\$1500" and insert "\$1000;" amend page ten by striking out all of lines two, three and four, under head of Geological Department, Deficiency.

The Senate refused to recede from the following amendments, in which the House refused to concur: Amend Comptroller's Department by adding between lines six and seven, the words "for salary of one pension clerk, \$500;" also, between lines thirty-five and thirty-six, by adding the words "for salary of one pension clerk, \$1500;" amend by adding after line thirty-seven, page five, the words "for printing, binding and distributing forms, tax law, with instructions and current printing, \$12,000."

Senator Ruby moved that a Committee of Free Conference be appointed to confer with a like committee on the part of the House on Senate amendments to House bill No. 357. Carried.

The President appointed as such committee, Senators Bowers, Mills and Baker.

Message from the House by the Chief Clerk, Mr. Ketchum, transmitting for concurrence the following House bills:

House bill No. 152, "An act to incorporate the Howard Institute of Waco, Texas."

House bill No. 220, "An act to further provide for a jury fund in the several counties of this State."

House bill No. 222, "An act to amend an act entitled 'an act to adopt and establish a Penal Code for the State of Texas,' approved August 26, A. D. 1856."

House bill No. 232, "An act to incorporate the North Western Land and Immigration Company."

House bill No. 285, "An act prescribing the manner of relieving sureties on official bonds."

House bill No. 299, "An act to repeal an act entitled 'an act regulating contracts for labor,' approved November 1, 1866."

House bill No. 300, "An act repealing an act entitled 'an act establishing a general apprentice law, and defining the obligations of master, or mistress, and apprentice,' approved October 27, 1866."

House bill No. 320, "An act to enforce section twenty-one, article one, of the Constitution."

House bill No. 337, "An act to regulate proceedings in the district courts of the State of Texas."

House bill No. 359, "An act to legalize the official acts of I. H. Steen, while acting as justice of the peace of Hamilton county."

House bill No. 360, "An act to legalize the official acts of I. H. Steen, while acting as district clerk of Hamilton county."

House bill No. 363, "An act for the relief of the heirs of John Staker, deceased."

House bill No. 376, "An act to repeal 'an act to amend articles 757 and 766 of an act to adopt and establish a penal code for the State of Texas,' approved November 12, 1866."

House bill No. 377, "An act to amend article 756 and to repeal article 757 of 'an act to adopt and establish a penal code for the State of Texas,' approved August 26, 1856."

House bill No. 384, "An act to protect prisoners while under arrest."

House bill No. 386, "An act to amend section first of 'an act to establish the method of trying the right of property levied on under writs of execution, sequestration and attachment where the same is claimed by a person not a party to such writs,' approved March 18, 1848."

House bill No. 396, "An act to incorporate the Austin Trust Company."

House bill No. 417, "An act to legalize the official acts of certain officers of this State."

House bill No. 419, "An act requiring foreigners, who have resided in the State of Texas three years, to at once declare their intention to become citizens of the United States, or on failure so to do to be deprived from benefits of 'an act defining the homestead and other property exempt from forced sale in the State, approved August 15, 1870.'"

House bill No. 452, "An act to incorporate the European and Texas Immigration Association."

House bill No. 453, "An act to authorize the amendment of affidavits and bonds in certain cases."

House bill No. 454, "An act to amend an act entitled 'an act to amend the first section of an act to regulate proceedings in the district courts, approved may 13, 1846,' approved December 10, 1863."

House bill No. 456, "An act to amend article 392, chapter two, title twelve, of 'an act to adopt and establish a Penal Code for the State of Texas,' approved August 26, 1856."

House bill No. 458, "An act to regulate the sale of lands for taxes."

House bill No. 350, "An act to incorporate the Protection Fire Company No. 8, of the city of Galveston, State of Texas."

Also, returning with amendments, Senate bill No. 75, "An act to incorporate the Austin Gas Company."

House amendment to Senate bill No. 75, in line nine, after the word "have" strike out the word "perpetual;" same line, after the word "succession" insert the words "for twenty-five years."

By leave, Senator Fountain submitted the following reports of Committee on Judiciary :

COMMITTEE ROOM,
AUSTIN, May 5, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your Committee on Judiciary, to whom was referred petition of the citizens of Van Zandt county to levy a special tax of one per cent. for the purpose of building a new court house, having carefully considered the same report back the accompanying bill, and recommend its passage.

Respectfully,

A. J. FOUNTAIN,
Chairman.

A bill (Senate bill No. 410) to be entitled "An act to authorize the county court of Van Zandt county to levy a special tax of one per cent. for the purpose of building a new court house."

Report and bill read first time and laid over under the rules.

COMMITTEE ROOM,
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your Committee on Judiciary, to whom was referred Senate bill No. 202, entitled "An act to incorporate the city of Austin," after careful consideration, instruct me to report the same back and recommend the passage of the accompanying bill as a substitute therefor.

Respectfully,

A. J. FOUNTAIN,
Chairman.

Report and substitute (substitute Senate No. 202) "An act to authorize the city council of the city of Austin to construct a bridge across the Colorado river," read first time.

On motion of Senator Bowers, the rules were suspended, Senate bill No. 202 read second time and substitute adopted.

Substitute Senate bill No. 202 ordered engrossed and passed to a third reading.

On motion of Senator Baker, the rules were further suspended and substitute Senate bill No. 202 read third time and passed.

On motion of Senator Parsons, the rules were suspended to take from file House bill No. 599, "An act to authorize the Governor to prepare and issue bonds to an amount sufficient to meet any deficiency in the receipts of revenue for the years 1871 and 1872, and also providing for the payment of said bonds and interest thereon." Read first time.

Senator Pickett moved the bill be referred to the Committee on Finance. Yeas and nays called for and motion lost, by the following vote :

Yeas—Bell, Bowers, Cole, Dohoney, Douglass, Flanagan, Ford, Hertzberg, Hillebrand, Latimer, Pickett, Pridgen, Shannon—13.

Nays—Mr. President, Baker, Fountain, Gaines, Hall, Mills, Parsons, Pettit, Pyle, Rawson, Ruby, Saylor, Tendick—13.

Senator Pyle moved that the vote just taken be reconsidered. Carried.

Senator Flanagan moved to refer House bill No. 599 to the Committee on Finance. Yeas and nays called for, and motion carried by the following vote :

Yeas—Bell, Bowers, Cole, Dohoney, Douglass, Flanagan, Ford, Hertzberg, Hillebrand, Latimer, Pickett, Pridgen, Pyle, Shannon—14.

Nays—Mr. President, Baker, Fountain, Gaines, Hall, Mills, Parsons, Pettit, Rawson, Ruby, Saylor, Tendick—12.

Senator Parsons moved that one hundred copies of the bill be printed, and the Committee on Finance instructed to report on House bill No. 599 on Tuesday next at 11 o'clock A. M. Yeas and nays called for, and motion carried by the following vote :

Yeas—Mr. President, Baker, Bell, Bowers, Cole, Dohoney, Douglass, Flanagan, Ford, Hillebrand, Latimer, Mills, Parsons, Pettit, Pickett, Pridgen, Pyle, Rawson, Shannon, Tendick—20.

Nays—Fountain, Gaines, Hall, Hertzberg, Ruby, Saylor—6.

Senator Hall moved to adjourn to 10 o'clock A. M., Monday.

Yeas and nays called for and motion lost by the following vote :

Yeas—Mr. President, Baker, Bowers, Cole, Gaines, Hall, Latimer, Rawson, Saylor—9.

Nays—Bell, Dohoney, Douglass, Flanagan, Ford, Fountain, Hertzberg, Hillebrand, Mills, Parsons, Pettit, Pickett, Pridgen, Pyle, Ruby, Shannon, Tendick—17.

Senator Fountain moved to adjourn to 10 A. M. to-morrow, yeas and nays called for and motion lost by the following vote :

Yeas—Mr. President, Baker, Bell, Cole, Fountain, Gaines, Hertzberg, Hillebrand, Rawson, Ruby—10.

Nays—Bowers, Dohoney, Douglass, Flanagan, Ford, Hall, Latimer, Mills, Parsons, Pettit, Pickett, Pridgen, Pyle, Saylor, Shannon, Tendick—16.

Senator Fountain moved to adjourn to 7 o'clock P. M. to-day, yeas and nays called for and motion lost by the following vote :

Yeas—Fountain, Hall, Hertzberg, Latimer, Ruby—5.

Nays—Mr. President, Baker, Bell, Bowers, Cole, Dohoney, Douglass, Flanagan, Ford, Gaines, Hillebrand, Mills, Parsons, Pettit, Pickett, Pridgen, Pyle, Rawson, Saylor, Shannon, Tendick—21.

On motion of Senator Pettit, the rules were suspended to take from file Senate bill No. 410, "An act to authorize the county court of Van Zandt county to levy a special tax of one per cent. for the purpose of building a new court house." Read second time, ordered engrossed and passed to a third reading.

On motion of Senator Pettit, the rules were further suspended and Senate bill No. 410 read third time and passed.

Senator Gaines moved the Senate adjourn to 10 A. M. to-morrow. Yeas and nays called for and motion lost by the following vote :

Yeas—Baker, Fountain, Gaines, Hertzberg, Hillebrand—5.

Nays—Mr. President, Bell, Bowers, Broughton, Cole, Dohoney, Douglass, Flanagan, Ford, Hall, Latimer, Mills, Parsons, Pettit, Pickett, Pridgen, Pyle, Rawson, Ruby, Saylor, Shannon, Tendick—22.

On motion of Senator Pickett, the rules were suspended, to take from file House bill No. 499, "An act to incorporate the Galveston, Hotel Company." Read first time, rules suspended, read second time and passed to its third reading.

On motion of Senator Ruby, the rules were further suspended, and House bill No. 499 read third time and passed.

On motion of Senator Pridgen, the rules were suspended, to take from file House joint resolution No. 22, "Joint resolution authorizing the Governor to dispose of the Houston Tap and Brazoria Railroad." Read second time, and on motion of Senator Pridgen the following amendments reported by the Committee on Judiciary, were adopted : Amend section one, line seven, by inserting after the word "public" the words "or private;" amend by adding to the

bill the following: "Section 2. That this resolution take effect and be in force from and after its passage."

Senator Pridgen offered the following amendment, which was adopted: Amend by striking out in section one, line eleven, the word "ninety" and insert in lieu thereof the word "thirty."

House joint resolution No. 22 passed to a third reading, and on motion of Senator Pridgen the rules were further suspended and the resolution read third time and passed.

Senator Pyle moved to suspend the rules to take from file House bill No. 505, "An act to encourage the speedy construction of a railway through the State of Texas to the Pacific Ocean."

Yeas and nays called for, and motion lost by the following vote:

Yeas—Baker, Bell, Bowers, Broughton, Cole, Dohoney, Douglass, Flanagan, Latimer, Mills, Parsons, Pyle, Rawson, Shannon—14.

Nays—Mr. President, Ford, Fountain, Gaines, Hall, Hertzberg, Hillebrand, Pettit, Pickett, Ruby, Saylor, Tendick—12.

Senator Gaines moved to adjourn to 10 o'clock A. M., Monday. Yeas and nays called for, and motion lost by the following vote:

Yeas—Mr. President, Baker, Bowers, Gaines, Hall, Hillebrand, Latimer, Pickett, Rawson, Saylor, Tendick—11.

Nays—Bell, Broughton, Cole, Dohoney, Douglass, Flanagan, Ford, Fountain, Hertzberg, Mills, Parsons, Pettit, Pyle, Ruby, Shannon—15.

Senator Hall moved to adjourn to 9 o'clock A. M., Monday, May 8. Yeas and nays called for, and motion carried by the following vote:

Yeas—Mr. President, Baker, Bowers, Ford, Fountain, Gaines, Hall, Hillebrand, Latimer, Pickett, Rawson, Saylor, Tendick—13.

Nays—Bell, Broughton, Cole, Dohoney, Douglass, Flanagan, Hertzberg, Mills, Parsons, Pettit, Pyle, Ruby, Shannon—13.

So the Senate, at 6 o'clock P. M., adjourned to 9 o'clock A. M., Monday, May 8.
